

Subpart 208.74—Enterprise Software Agreements

SOURCE: 67 FR 65511, Oct. 25, 2002, unless otherwise noted.

208.7400 Scope of subpart.

This subpart prescribes policy and procedures for acquisition of commercial software and software maintenance, including software and software maintenance that is acquired—

- (a) As part of a system or system upgrade, where practicable;
- (b) Under a service contract;
- (c) Under a contract or agreement administered by another agency (*e.g.*, under an interagency agreement);
- (d) Under a Federal Supply Schedule contract or blanket purchase agreement established in accordance with FAR 8.404(b)(4); or
- (e) By a contractor that is authorized to order From a Government supply source pursuant to FAR 51.101.

208.7401 Definitions.

As used in this subpart—

Enterprise software agreement means an agreement or a contract that is used to acquire designated commercial software or related services such as software maintenance.

Enterprise Software Initiative means an initiative led by the DoD Chief Information Officer to develop processes for DoD-wide software asset management.

Golden Disk means a purchased license or entitlement to distribute an unlimited or bulk number of copies of software throughout DoD.

Software maintenance means services normally provided by a software company as standard services at established catalog or market prices, *e.g.*, the right to receive and use upgraded versions of software, updates, and revisions.

Software product manager means the Government official who manages an enterprise software agreement.

208.7402 General.

Departments and agencies shall fulfill requirements for commercial software and related services, such as software maintenance, in accordance with the DoD Enterprise Software Initiative (ESI) (see Web site at [\[imit.navy.mil/esi\]\(http://www.don-imit.navy.mil/esi\)\). ESI promotes the use of enterprise software agreements \(ESAs\) with contractors that allow DoD to obtain favorable terms and pricing for commercial software and related services. ESI does not dictate the products or services to be acquired.](http://www.don-</p>
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208.7403 Acquisition procedures.

(a) After requirements are determined, the requiring official shall review the information at the ESI website to determine if the required commercial software or related services are available from DoD inventory (*e.g.*, Golden Disks and DoD-wide software maintenance agreements). If the software or services are available, the requiring official shall fulfill the requirement from the DoD inventory.

(b) If the required commercial software or related services are not in the DoD inventory, and not on an ESA, the contracting officer or requiring official may fulfill the requirement by other means. Existing ESAs are listed on the ESI website.

(c) If the commercial software or related services are on an ESA, the contracting officer or requiring official shall review the terms and conditions and prices in accordance with otherwise applicable source selection requirements.

(d) If an ESA's terms and conditions and prices represent the best value to the Government, the contracting officer or requiring official shall fulfill the requirement for software or services through the ESA.

(e) If existing ESAs do not represent the best value to the Government, the software product manager (SPM) shall be given an opportunity to provide the same or a better value to the Government under the ESAs before the contracting officer or requiring official may continue with alternate acquisition methods.

(1) The contracting officer or requiring official shall notify the SPM of specific concerns about existing ESA terms and conditions or prices through the ESI webpage.

(2) The SPM shall consider adjusting, within the scope of the ESA, terms and conditions or prices to provide the best value to the customer.

(i) Within 3 working days, the SPM shall—

(A) Update the ESA;

(B) Provide an estimated date by which the update will be accomplished; or

(C) Inform the contracting officer or requiring official that no change will be made to the ESA.

(ii) If the SPM informs the contracting officer or requiring official that no change will be made to the ESA terms and conditions or prices, the contracting officer or requiring official may fulfill the requirement by other means.

(iii) If the SPM does not respond within 3 working days or does not plan to adjust the ESA within 90 days, the contracting officer or requiring official may fulfill the requirement by other means.

(3) A management official designated by the department or agency may waive the requirement to obtain commercial software or related services through an ESA after the steps in paragraphs (e)(1) and (e)(2)(i) of this section are complete. The rationale for use of an alternate source shall be included in the waiver request and shall be provided to the SPM.

PART 209—CONTRACTOR QUALIFICATIONS

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36313, July 31, 1991, unless otherwise noted.

Subpart 209.1—Responsible Prospective Contractors

209.101 Definitions.

“Entity controlled by a foreign government,” “foreign government,” and “proscribed information,” are defined in the provision at 252.209-7002, Disclosure of Ownership or Control by a Foreign Government.

[59 FR 51132, Oct. 7, 1994]

209.104 Standards.

209.104-1 General standards.

(e) For cost-reimbursement or incentive type contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion, the prospective contractor’s accounting system and related internal controls must provide reasonable assurance that—

(i) Applicable laws and regulations are complied with;

(ii) The accounting system and cost data are reliable;

(iii) Risk of misallocations and mischarges are minimized; and

(iv) Contract allocations and charges are consistent with invoice procedures.

(g)(i) *Ownership or control by the government of a terrorist country.* (A) Under